

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

Michael Coffey,

Plaintiff,

V.

Church of Arctura, et al.,

Defendants.

Case No. 2:24-cv-01304-GMN-BNW

REPORT AND RECOMMENDATION

10 On August 2, 2024, the Court ordered Plaintiff to file a second amended complaint by
11 September 2, 2024. ECF No. 6. It warned him that the failure to do so may result in dismissal of
12 his case. *Id.* Plaintiff has not filed a second amended complaint, and the deadline to do so has
13 passed. As a result, the Court recommends that this case be dismissed without prejudice.

14 The law permits a district court to dismiss an action based on a party’s failure to prosecute
15 his case or comply with a court order. *See Hells Canyon Preservation Council v. U.S. Forest*
16 *Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that courts may dismiss an action pursuant
17 to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff’s failure to prosecute or comply
18 with the rules of civil procedure or the court’s orders). In determining whether to dismiss an
19 action, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2)
20 the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
21 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
22 alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006)
23 (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

24 The first two factors, the public's interest in expeditiously resolving this litigation and the
25 court's interest in managing its docket, weigh in favor of dismissing Plaintiff's claims. The third
26 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
27 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court

1 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
2 factor—the public policy favoring disposition of cases on their merits—weighs against dismissal.

3 The fifth factor requires the court to consider whether less drastic alternatives can be used
4 to correct the party's failure that brought about the court's need to consider dismissal. Courts
5 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must
6 explore possible and meaningful alternatives." *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
7 Cir. 1986). Because Plaintiff has failed to update his address despite a court order to do so, the
8 only alternative is to enter another order directing Plaintiff to participate in his case. The
9 circumstances here do not indicate that Plaintiff needs additional time nor is there evidence that
10 he did not receive the Court's previous order. So, the fifth factor favors dismissal.

11 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
12 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holdings dismissal is proper where least four factors
13 support dismissal or where at least three factors "strongly" support dismissal).

14 **IT IS THEREFORE RECOMMENDED that THIS ACTION BE DISMISSED** for
15 failure to comply with a court order.

16 **NOTICE**

17 This report and recommendation is submitted to the United States district judge assigned
18 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
19 may file a written objection supported by points and authorities within fourteen days of being
20 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
21 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,
22 1157 (9th Cir. 1991).

23
24 DATED: September 9, 2024

25
26 
27 BRENDA WEKSLER
28 UNITED STATES MAGISTRATE JUDGE